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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186939 DATE: December 16, 1977
MATTER OF: Department of Commerce - Request for Reconsideration

DIGEST:

1. On January 27, GAO sustained protest against Department of Commerce contract award. Subsequent request by Commerce for reconsideration on basis that decision was erroneous was untimely filed and not, therefore, considered on merits. On October 25, GAO allowed protester's claim for proposal preparation costs. Commerce request for reconsideration of that decision will not be considered on merits, since it is based on same arguments raised in earlier request regarding January 27 decision.
2. Request for conference on merits of request for reconsideration is denied, since merits of request will not be considered in view of section 20.9 of our GAO's Bid Protest Procedures.

In our decision In International Finance and Economics, B-186939, January 27, 1977, 77-1 CPD 66, we sustained a protest by International Finance and Economics (IFE) against the propriety of an award to another firm for a study of foreign maritime aids by the Department of Commerce (Commerce) under request for proposals (RFP) 6-38070. Although we concluded that the award was improper, performance had proceeded to the point where corrective action was no longer practical or in the Government's interest.

By letter dated May 24, Commerce asked us to reconsider. The basis for the request was Commerce's belief that the decision was premised upon erroneous factual and legal conclusions. However, we declined to consider the request on its merits, since it was filed more than 10 working days after the basis for reconsideration was known and was, therefore, untimely under section 20.9 of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures). Department of Commerce-Request for Reconsideration, B-186939, July 14, 1977, 77-2 CPD 23.

IFE subsequently claimed reimbursement for proposal preparation costs incurred in competing on the subject procurement. We considered the claim in our decision In International Finance and Economics, B-186939, October 25, 1977, in which we first pointed out that the claim was initially presented to Commerce, but was denied by Commerce on the basis of that agency's view that " * * * the record does not

B-186939

support the conclusion that IFE was denied a contract because of illegal actions or bad faith on the part of Commerce procurement personnel." We further stated:

"* * * Moreover, Commerce cited its disagreement with our decision as affording additional bases to deny the claim. We note that the crux of its disagreement was submitted to our Office with the request for reconsideration, which we decline to consider in view of the untimeliness of its filing."

We then concluded that IFE was entitled to recover its proposal preparation costs because Commerce's actions under the RFP, and particularly with regard to the evaluation of IFE's proposal, were unreasonable, and but for those actions it was reasonably certain that IFE would have been the ultimate awardee.

By letter of November 8, Commerce requests reconsideration of our October 25 decision, contending, again, that our January 27 findings, which provided the basis for the October 25 decision, were in error. The arguments raised by Commerce in support of its position are precisely those raised in its May 24 letter, and which we noted in our July 14 decision as relevant to Commerce's denial of IFE's claim to that agency for proposal preparation costs.

As indicated above, we stated in July that the merits of Commerce's contention that our initial decision was erroneous would not be considered in view of the filing requirements of section 20.9 of our Procedures. We pointed that fact out again in our October 25 decision, as quoted above. Consideration of the merits at this time merely because the same arguments are now raised in the context of a request that we reconsider our conclusion that IFE is entitled to recover proposal preparation costs would, by circumvention, subvert those filing requirements. The request for reconsideration is, therefore, denied.

Commerce has also requested a conference before our Office on the merits of its latest request, pursuant to section 20.7 of our Procedures, which provides for a conference on the merits of a bid protest. However, since our Procedures do not explicitly provide

B-186939

for conferences upon reconsideration, and in view of the preceding paragraph, a conference would not be appropriate. See M. C. & D. Capital Corporation, B-189450, August 25, 1977, 77-2 CPD 148.


Deputy Comptroller General
of the United States